IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 372 OF 1995

The State of Maharashtra ...Appellant.

Versus

1. Arvind R. Shaha (Vendor)

2. Sandip Rajashi Shaha,
M/s. Sandip Oil Depot,
Daruvala Building,
Near Civil Hospital,
Thane ...Respondents.

.....

Shri. A.S. Shitole, A.P.P. for appellant.

Shri. M.K. Kocharekar i/b P.S. Dani for respondents.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 8TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. State of Maharashtra challenges the judgment and order dated 16.3.1995 passed by the learned Chief Judicial Magistrate, Thane in Regular Criminal case No. 82/93. By the said judgment, the learned Magistrate acquitted the respondents i.e. original accused Nos. 1 and 2 of the offence under sections 7(i), 2(ia)(a), 2(ia)(b), 2(ia)(c) and 2(a)(m) punishable under Section 16 of the Prevention of

Food Adulteration Act.

2. Brief facts of the case are as under:-

. The respondent No.1 Arvind Shaha was the vendor of M/s. Sandip Oil Depot and respondent No.2 Sandip Shaha was the proprietor of M/s. Sandip Oil Depot. On 18.7.92 the complainant P.W.1 Mohan Patankar visited the shop of respondent M/s. Sandip Oil Depot near Civil Hospital, Thane. The respondent No.1 was present in the shop as a vendor and he disclosed that the respondent No.2 is the proprietor. The complainant P.W.1 Mohan Patankar disclosed his identity and stated his intention to take sample of Rapeseed Oil for analysis. He purchased 450 gms Rapeseed Oil (Refined) for Rs.15.30 Ps. The said sample was packed in a clean and dry container. The appellant issued receipt for Rs.15.30 Ps. Notice under form VI and under section 14(a) were issued to the respondent No.1.

. The sample which was purchased was equally divided in three clean, dry and empty glass bottles. The bottles were corked, sealed, wrapped and packed. Thereafter, four seals were placed on each of the bottle so as to prevent tampering. Thereafter, label containing necessary details was fixed on each of the said bottles. On 20.7.92 the

complainant P.W.1 Mohan Patankar sent one sample with form VII in a sealed cover to the Public Analysts. The Food Inspector received the report from Public Analysis that the sample is adulterated. Hence, he obtained sanction from the authority and lodged complaint.

3. In support of his case the prosecution has examined only Food Inspector P.W.1 Mr. Mohan Patankar. After his evidence, the learned Magistrate heard both sides and framed charge against both the respondents. Respondents pleaded not guilty to the said charge and claimed to be tried. After framing of the charge the respondents have cross examined P.W.1 Mohan Patankar in detail. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted the respondents. Hence, this appeal.

4. I have heard Shri. Shitole, the learned A.P.P. for the appellant-State andthe learned advocate for the respondents. I have also perused the entire material on record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

5. In the present case panch witness has not been examined and the only witness who has been examined

is P.W.1 Mohan Patankar. The learned Magistrate has acquitted the respondents-accused on the ground

that there is no compliance of Rule 16(c). He has relied on the decision of this Court reported in **1985(2) P.F.A. Cases 1988.** In the present case it is seen that the Code Number, Serial Number and other details on the slip are not mentioned in the complaint as well as panchanama. Neither the complaint nor the panchanama or the evidence on record reveals that the paper slip had the contents as mentioned above. In such case the conclusion of the learned Magistrate that there is a breach of Rule 16(c) which is mandatory and which would result in the acquittal of the respondents is a reasonable and possible view.

6. Moreover, in the present case the report of Public Analysis does not mention the date when the sample was analysed and by whom it was analysed and in such case it would not be safe to rely on the report of the Public Analyst. I see nothing wrong in the approach of the learned Magistrate. The learned Magistrate has also given some other plausible reasons for acquittal in the impugned judgment, however, I do not want to overburden this judgment by reiterating the same. It is well settled that if the view of acquittal could have

been reasonably arrived at, then the mere circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C. Anthony Vs. K.G. Raghavan Nair).** In the case of **C. Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

7. Taking all these facts into consideration, the conclusion arrived at by the learned Magistrate that the prosecution has not proved its case is a possible and reasonable view. Criminal appeal is dismissed. The appellants are on bail, their bail bonds stand cancelled.